

Serial No. 10/825,046
Amendment dated August 22, 2006
Responsive to Office Action dated June 27, 2006
Page 6

REMARKS/ARGUMENTS

The courtesy extended by the examiner during the interview of August 21, 2006 is acknowledged and appreciated.

Claims 1-16 are pending. Independent claims 1, 5 and 11 are further amended to positively recite that the infusion sleeve terminates at the distal end into peak and valley formations. Also, the claim language regarding needle chamber was changed to needle channel to be consistent with terminology in certain ones of the dependent claims.

The Office Action rejects claims 1, 3-5 and 8-10 under 35 USC 102(b) by Strukel (US Patent No. 5,919,157) and rejects claims 2, 6-7 and 11-16 under 35 USC 103(a) over Strukel '157 in view of Drucker (IUS Patent No. 5,919,157). The claim rejections are respectfully traversed.

Fig. 8 of Strukel '157 reveals circular ports 23, 24 in the side wall of the tapering infusion sleeve tip. In the isometric view of Fig. 8, they may appear to have a peak and valley configuration, but such is an optical distortion due to the isometric rendition of the view.

Nevertheless, such ports 23, 24 are arranged in the side wall, as opposed to being part of a distal end of the infusion sleeve. Further, the independent claims recite that the valley formations be closer to the proximal end of the infusion sleeve than are the peak formations. Such a limitation would not be met by Strukel '157, even if the circular ports 23, 24 were viewed to be peak and valley formations. This is because the majority of what could constitute the valley formations is clearly further from the proximal end of the infusion sleeve than is the case for what would be considered the lower peak formation in the orientation of Fig. 8.

Serial No. 10/825,046
Amendment dated August 22, 2006
Responsive to Office Action dated June 27, 2006
Page 7

Independent claims 1, 5 and 11 were further amended to recite in effect that the infusion sleeve terminates at the distal end into the peak and valley formations. Such contrasts with Strukel, whose circular ports are spaced from its distal end and the distal end itself is uniform and substantially circular. That is, there is no termination into peak and valley formations.

As concerns the Drucker patent, it reveals an arthroscopic surgical cutting tool for shearing tissue or bone. It provides:

When the inner tube 20 is inserted into the outer tube 16, the cutter 44 is positioned in close proximity to the tabs 26, 28. The right-handed and left-handed edges 46, 48 of the cutter 44 are periodically exposed through the side-facing openings 38, 40 as the inner tube 20 rotates relative to the outer tube 16 acting in conjunction with the cutting edges 30, 32, 34, 36 of the tabs 26, 28 to sever or shear tissue.

The foregoing, therefore, suggests that the openings 38, 40 of the outer tube 16 play a role in severing or shearing tissue through the exposure of the cutter 44. A skilled artisan in phacoemulsification would not be motivated to modify the flexible infusion sleeve of a phacoemulsification tool such as that of Strukel by adopting the rigid outer tube 16 construction of Drucker suited for cutting in light of the different purposes for each type of sleeve (tissue irrigating versus tissue cutting).

Withdrawal of the rejection is earnestly solicited.

Respectfully submitted,



Robert J. Hess, reg. no. 32,139
Attorney for applicant
phone 203 356-0727